

Chapter 8.32

SEXUALLY ORIENTED BUSINESSES

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8.32.010 Definitions.

A. For the purposes of this Chapter, the following definitions shall apply:

1. ADULT ARCADE - Any commercial establishment to which the public is permitted or invited where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image or virtual reality producing machines for viewing by persons, are used regularly to show films, motion pictures, video cassettes, slides, or other photographic, digital or electronic reproductions describing, simulating or depicting "specified sexual activities" or "specified anatomical areas."

2. ADULT BOOKSTORE, ADULT NOVELTY STORE, OR ADULT VIDEO STORE - A commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations, however produced, that depict or describe "specified sexual activities" or "specified anatomical areas." Provided, however, if less than 30% of its display floor area is used for such, the business shall not be deemed an adult bookstore, adult novelty store, or adult video store; or

b. Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities." Provided, however, if less than 30% of its display floor area is used for such items, the business shall not be deemed an adult bookstore, adult novelty store, or adult video store.

3. ADULT CABARET - Means a nightclub, bar, restaurant, concert hall, auditorium or other commercial establishment that features:

a.. Persons who appear nude or in a state of nudity or seminudity; or

b. Live performances that are characterized by the exposure of "specified anatomical areas" or by the exhibition of "specified sexual activities."

4. ADULT MOTEL - A hotel, motel or similar commercial establishment that offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides, or other media productions, however produced, which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas," and which commercial establishment has a sign visible from the public right-of-way which advertises the availability of this adult type of media production.

5. ADULT MOTION PICTURE THEATER - A commercial establishment that is distinguished or characterized by the showing, for any form of consideration, of films, motion pictures, video cassettes, slides, or similar photographic reproductions, on more than 100 days per year, that have an "X" rating or that have an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas."

6. ADULT THEATER - A theater, concert hall, auditorium, or similar commercial establishment that, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by an emphasis on exposure of "specified anatomical areas" or by "specified sexual activities."

7. COMMERCIAL ESTABLISHMENT - The term "commercial establishment" includes clubs, fraternal organizations, social organizations, civic organizations or other similar organizations, and any business engaged in commerce.

8. EMPLOYEE - A person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage, or other compensation by the operator of said business.

9. ESTABLISH A SEXUALLY ORIENTED BUSINESS - means
a. The opening or commencement of any such business as a new business;

b. The conversion of an existing business into a sexually oriented business;

c. The addition of a different sexually oriented business to any other existing sexually oriented business; or

d. The relocation of a sexually oriented business.

10. FOYER - An architectural element of a building that consists of an entry hall or vestibule that is completely enclosed and contains one door to provide access to areas outside of the building and a separate door to provide access to areas inside of the building.

11. MANAGER - An operator, who is employed by a sexually oriented business to act as a manager or supervisor of employees or is otherwise responsible for the operation of the business.

12. NUDITY OR STATE OF NUDITY:

a. The appearance of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or

b. A state of dress which fails opaquely and fully to cover human buttocks, anus, male or female genitals, pubic region, or areola or nipple of the female breast.

13. NUDE MODEL STUDIO - Any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons.

14. OPERATOR -Includes the owner, custodian, manager, operator, or person in charge of any sexually oriented business.

15. PEEP BOOTH - A room, semi-enclosure or other similar area located within a sexually oriented business wherein a person may view representations of "specified anatomical areas" or "specified sexual activities."

16. PERSON - An individual, proprietorship, partnership, corporation, limited liability company, association, or other legal entity.

17. OWNER - Any person owning, directly or beneficially:

a. Any membership or partnership interest in a limited liability company or limited liability partnership if such person has any legal control or authority over the management or operation of the entity; or

b. In the case of any other legal entity, five percent or more of the ownership interests in the entity, except for shareholders, but including such shareholders who are corporate officers or directors or who otherwise have any legal control or authority over the management or operation of the entity.

18. PUBLIC PARK - An area of land owned by a governmental entity or private association and intended to be used for recreational purposes, including any such land that contains no improvements and is intended only for open space purposes, and including any such land that is intended for use only for pathway purposes.

19. SEXUALLY ORIENTED BUSINESS - An adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, peep booth or nude model studio. The definition of sexually oriented business shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the State of Colorado engages in medically approved and recognized sexual therapy, or a college, junior college or other institution which houses an adult model studio for artistic or educational purposes. An establishment engaged in commerce may have other principal business purposes that do not involve the depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as a sexually oriented business. Such other business purposes will not serve to exempt such commercial establishments from being categorized as a sexually oriented business so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas."

20. SEMINUDE OR SEMINUDITY - A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breasts, as well as portions of the body covered by supporting straps or devices, which supporting straps or devices are used to support or enable the wearing of such clothing.

21. SPECIFIED ANATOMICAL AREAS - As used herein means and includes any of the following:

a. Human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola, that are not completely and opaquely covered ; or

b. Human male genitals in a discernibly turgid state even if completely and opaquely covered.

22. SPECIFIED CRIMINAL ACTS - Sexual crimes against children, sexual abuse, sexual assault, or crimes connected with another sexually oriented business including, but not limited to, distribution of obscenity, prostitution, or pandering.

23. SPECIFIED SEXUAL ACTIVITIES - Includes any of the following:

a. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus or female breasts;

b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

c. Masturbation, actual or simulated;

d. Human genitals in a state of sexual stimulation, arousal, or tumescence; or

e. Excretory functions as part of or in connection with any of the activities set forth in subsections a through d of this definition. (Ord. 8, §1, 2004)

8.32.020 Location of sexually oriented businesses.

A. It shall be unlawful for any person to own, manage, operate, or establish a sexually oriented business outside of the "I-1", "I-2", or "B-3" Zoning Districts or on a premises abutting the premises of:

1. Any church;

2. Any public or private school;

3. Any residentially zoned property ;

4. Any public park;

5. Any licensed childcare facility or daycare business;

6. Any property, public or private, used for and equipped with facilities for recreation, especially by children. A playground may be incidental to school use but is not limited to school use or school facilities as defined herein.

B. It shall be unlawful for any person to own, manage, operate, or establish a sexually oriented business within a building within 100 feet of the right-of-way of Highways 50, 92, or 348.

C. It shall be unlawful for any person to own, manage, operate, or establish a sexually oriented business which does not comply with Section 18.32.040, or which is in a building within 1000 feet of any other building housing a sexually oriented business. (Ord. 8, §1, 2004)

8.32.030 Measurement of distance.

A. The distance between any two sexually oriented business buildings shall be measured in a straight line, without regard to intervening structures, between the closest exterior structural walls of each building.

B. The distance between any sexually oriented business building and a highway shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior structural wall of the sexually oriented business building to the nearest right-of-way line of the highway. (Ord. 8, §1, 2004)

8.32.040 Additional regulations.

A. All exterior windows in a sexually oriented business shall be opaque to such an extent that interior objects viewed from outside shall be so obscure as to be unidentifiable. Exterior windows in sexually oriented businesses shall not be used for any display or sign except for a sign that complies with the requirements of this Chapter.

B. All doors for ingress and egress to a sexually oriented business, except emergency exits used only for emergency purposes, shall be located on the front of the sexually oriented business. For purposes of this subsection, the front of a sexually oriented business shall be deemed to be that facade of the building that faces the front lot line of the lot or parcel on which the business is located. Every sexually oriented business shall have a foyer at every point of ingress or egress, except for emergency exits. In the case of a sexually oriented business having more than one front lot line, the sexually oriented business shall be oriented such that the front of the business faces away from the nearest of any of the land uses listed in Subsection 18.32.020(A).

C. The interior portion of the premises of a sexually oriented business to which patrons are permitted access shall be equipped with overhead lighting fixtures of

sufficient intensity to illuminate every place (including peep booths) at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, manager and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises.

D. Any adult cabaret or adult theater shall have one or more separate areas designated as a stage. Entertainers shall perform only upon a stage. The stage shall be fixed and immovable and located inside the building in which the adult use operates. No seating for the audience shall be permitted within three (3) feet of the edge of the stage. No members of the audience shall be permitted upon the stage or within three (3) feet of the edge of the stage.

E. The entire premises must be brought into compliance with Sections 15.04.080 and 15.04.090 regardless of its location, or whether a building permit is required or not. (Ord. 8, §1, 2004)

8.32.050 Conduct in sexually oriented business.

A. No owner, operator, manager or employee mingling directly with the patrons of a sexually oriented business, or serving food or drinks, shall be in a state of nudity.

B. No owner, operator, manager or employee shall encourage or knowingly permit any person upon the premises to touch, caress, or fondle the genitals, pubic region, buttocks, anus or breasts of any person.

C. It shall be unlawful for any employee of a sexually oriented business to receive tips from patrons except as set forth in subsections (D) and (E) of this Subsection.

D. An owner, operator, manager or employee who desires to provide for tips from its patrons shall establish one or more boxes or other containers to receive tips. All tips for such employees shall be placed by the patron of the sexually oriented business into the tip box.

E. A sexually oriented business that provides tip boxes for its patrons as provided in this section shall post one or more signs to be conspicuously visible to the patrons

on the premises, in bold letters at least one inch high to read as follows:

"All tips are to be placed in the tip box and not handed directly to employees. Any physical contact between a patron and employees is strictly prohibited."

F. Hours of operation.

1. It shall be unlawful for a sexually oriented business to be open for business or for the owner, operator, manager or any employee of a sexually oriented business to allow patrons upon the premises during the following time periods:

a. On any Monday through Friday, other than January 1, from 12:00 a.m. until 8:00 a.m.;

b. On any Saturday and Sunday from 2:00 a.m. until 8:00 a.m..

G. Minimum age.

1. Except for such employees as may be permitted by law, it shall be unlawful for any person under the age of eighteen years to be upon the premises of a sexually oriented business.

2. It shall be unlawful for the owner, operator, manager or any employee of the licensee to allow anyone under the age of eighteen years, except for such employees or delivery persons as may be permitted by law, to be upon the premises of a sexually oriented business.

H. Signs for sexually oriented businesses. In addition to complying with all applicable sign regulations, a sexually oriented business shall display a sign, clearly visible and legible at the entrance to the business, that gives notice of the adult nature of the sexually oriented business and of the fact that the premises is off limits to those under the age of eighteen years. No sign for a sexually oriented business shall contain words, lettering, photographs, silhouettes, drawings or pictorial representations that emphasize specified anatomical areas or specified sexual activities. (Ord. 8, §1, 2004)

8.32.060 Enforcement.

A. The City Manager and his designated representative shall have the right of entry to inspect and enforce the provisions of this Chapter in accordance with the procedures

and provisions City Building Codes in addition to any other provisions provided by law.

B. Continuous violation of this Ordinance are hereby declared to be a nuisance which may be abated in accordance with law. (Ord. 8, §1, 2004)